



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA Facsimile (202-429-3301) and First Class Mail**

Matthew T. Sanderson, Esq.  
Caplin & Drysdale, Chartered  
One Thomas Circle, NW, Suite 1100  
Washington, D.C. 20005

**JUL 16 2013**

RE: MUR 6112 and AF 2639  
John McCain 2008, Inc.  
McCain-Palin Compliance Fund, Inc.

Dear Mr. Sanderson:

On, July 11, 2013 the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 434(a)(6)(A), 434(b) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

*Marianne Abely*

Marianne Abely  
Attorney

Enclosure  
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

**BEFORE THE FEDERAL ELECTION COMMISSION**

2013 JUL 12 11:20

OFFICE OF GENERAL COUNSEL

In the Matters of

John McCain 2008, Inc. and  
Joseph Schmuckler in his  
official capacity as treasurer

and

McCain-Palin Compliance Fund, Inc.  
and Joseph Schmuckler in his  
official capacity as treasurer

MUR 6112  
and AF 2638

**CONCILIATION AGREEMENT**

This Conciliation Agreement reflects the final resolution of a complaint filed with the Federal Election Commission ("Commission") and information obtained by the Commission concerning contributions received during the 2008 presidential campaign by John McCain 2008, Inc., McCain-Palin Compliance Fund, Inc., and Joseph Schmuckler in his official capacity as treasurer of both committees (collectively, "Respondents") and issues identified in the Final Audit Report of the Commission on McCain-Palin 2008 Inc. and McCain-Palin Compliance Fund, Inc. (Mar. 24, 2008-Dec. 31, 2008).

The Commission found reason to believe that John McCain 2008, Inc. and Joseph Schmuckler in his official capacity as treasurer ("McCain 2008") violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended, (the "Act") by accepting contributions in excess of the limits applicable to the 2008 presidential election. The Commission also found reason to believe that Respondents violated 2 U.S.C. § 434(b) by failing to report correctly the original dates on which contributions were received by joint fundraising representatives and that

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McCain 2008 violated 2 U.S.C. § 434(b) by failing to correctly report contributions redesignated to McCain-Palin Compliance Fund, Inc.

The Commission has further found reason to believe that McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler in his official capacity as treasurer ("GELAC") failed to file certain 48-Hour Notices of contributions of \$1,000 or more received after the 20th day but more than 48 hours before the 2008 general election, in violation of 2 U.S.C. § 434(a)(6)(A), and referred the violation to the Reports Analysis Division ("RAD").

In response to a request from Respondents, on April 9, 2013, the Commission approved merging conciliation of Administrative Fine Matter 2638 ("AF 2638") with MUR 6112, and authorized RAD to transfer AF 2638 to the Office of General Counsel.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts and law in this matter are as follows:

1. McCain 2008 was the principal campaign committee for Senator John McCain during the 2008 primary election cycle. Joseph Schmuckler is the treasurer of McCain

2008. From 2006-2009, McCain 2008 reported raising approximately \$222 million in contributions from more than 1.4 million separate contributors.

2. GELAC is an authorized campaign committee for McCain, the Republican Party's presidential nominee during the 2008 election cycle. GELAC was established pursuant to 11 C.F.R. § 9003.3(a)(1)(i) and therefore accepts contributions to be used solely for legal and accounting services to ensure compliance with the Act. Joseph Schmuckler is the treasurer of GELAC. Between March 1, 2008 and December 20, 2008, McCain 2008 redesignated a total of \$13,782,264 in contributions to GELAC.

3. McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California were joint fundraising committees established pursuant to 11 C.F.R. § 102.17. Lisa Lisker was the treasurer of these joint fundraising committees during the relevant period. McCain 2008 participated in McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio. GELAC participated in McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California.

4. During the 2008 primary election period, McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio reported transferring over \$22 million in contributions to McCain 2008.

5. During the 2008 election period, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and

McCain-Palin Victory California reported transferring over \$13 million in contributions to the GELAC.

Excessive Contributions

6. During the 2008 election cycle, the Act instructed that no person was permitted to make a contribution to a candidate for federal office or the candidate's authorized political committee that in the aggregate exceeded \$2,300 each for the primary and general elections. 2 U.S.C. § 441a(a)(1)(A). As a corollary, it was unlawful for a candidate for federal office or the candidate's authorized political committee to accept contributions that in the aggregate exceeded \$2,300 each for the 2008 primary and general elections. See 2 U.S.C. § 441a(f).

7. McCain 2008 was limited to accepting contributions from individual donors who in the aggregate did not exceed \$2,300 each for the primary and general elections. 2 U.S.C. § 441a(a)(1)(A). Where a committee receives an excessive contribution, the Commission's regulations give the committee 60 days from the date of receipt to identify and refund, redesignate, or reattribute the excessive amount. 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

8. During the primary election period, McCain 2008 accepted a total of \$377,657 in contributions that exceeded the limits set forth in 2 U.S.C. § 441a(a)(1)(A) and were not resolved within 60 days of receipt.

9. Prior to receiving notification of the Commission's reason to believe finding, McCain 2008 resolved \$301,895 of the excessive contributions, though it did so outside of the 60-day time period permitted by the Act for resolving potential excessive contribution violations. See 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. §§ 103.3(b)(3), 110.1(b)(3)(i).

10. After receiving notification of the Commission's reason to believe finding, McCain 2008 resolved an additional \$75,762 in excessive contributions.

Misreporting Receipt Dates of Joint Fundraising Contributions

11. The Act requires political committees to publicly report all their receipts and disbursements. *See* 2 U.S.C. § 434. Each report must disclose, for the reporting period and calendar year, the total amount of all receipts and the total amount of all disbursements. *See* 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a).

12. The Act requires that an authorized committee of a candidate report the amount of all receipts from transfers by affiliated committees, as well as the identity of the affiliated committee and date(s) of transfer. *See* 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R. § 102.17(c)(3)(iii), (8)(i)(B). *See also* 11 C.F.R. §§ 104.3(a)(4), 104.8.

13. Commission regulations permit political committees to engage in joint fundraising with other political committees or with unregistered committees or organizations. *See* 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a participating political committee is required to report its share of funds received as a transfer-in from the fundraising representative. *See* 11 C.F.R. § 102.17(c)(8)(i)(B).

14. For contribution reporting and limitation purposes, the date a contribution is received by the joint fundraising representative — not the date received by the recipient political committee — is the date that the contribution is received by the participating political committee. *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8). The participating political committee is required to report the original date of receipt of the proceeds only after the funds have been transferred from the fundraising representative. *Id.*

15. For the \$22,257,684.17 in contributions received in transfers from its joint fundraising representatives — McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio — McCain 2008 properly reported the dates it received these transfers. But McCain 2008 did not correctly report the original dates that the joint fundraisers received the contributions, as required by 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a)-(b), and 11 C.F.R. § 102.17(c).

16. For the \$13,258,927.56 in contributions received in transfers from its joint fundraising representatives — McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California — GELAC properly reported the dates it received these transfers. But GELAC did not correctly report the original dates that the joint fundraisers received the contributions, as required by 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a)-(b), and 11 C.F.R. § 102.17(c).

Misreporting Transfers to the GELAC

17. Pursuant to Commission regulations, a committee that receives an excessive contribution may remedy the excessive amount by refunding the excessive amount or by seeking a redesignation or reattribution within 60 days. See 11 C.F.R. § 110.1(b)(5). If a contribution is redesignated by a contributor in accordance with section 110.1(b)(5), the treasurer of the authorized political committee receiving the contribution shall report the redesignation in a memo entry on Schedule A of the report covering the reporting period in which the redesignation is received. See 11 C.F.R. § 104.8(b)(2)(i). The first part of the memo entry discloses all the information for the contribution as it was originally reported on Schedule A. *Id.* The second part of the memo entry discloses information on the contribution as it was redesignated by the

contributor, including the date the redesignation was received and the election for which the contribution was redesignated. *Id.*

18. McCain 2008 redesignated a total of \$13,782,264 in primary contributions to GELAC. A projection of primary redesignations to GELAC indicated that McCain 2008 failed to itemize in memo entries \$1,989,693, or 14.4 % of these redesignations, on its disclosure reports.

19. Respondents contend that a majority of the redesignations were properly itemized on GELAC's reports.

#### 48-Hour Notices

20. The Act requires that a candidate's principal campaign committee shall notify the Commission of all contributions of \$1,000 or more, received by any authorized committee of the candidate less than 20 days but more than 48 hours before any election in which the candidate is running. 11 C.F.R. § 104.5(f).

21. GELAC did not file 48-Hour Notices for 169 contributions totaling \$240,700 that it received prior to the general election. *See* Final Audit Report of the Commission on McCain-Palin 2008 Inc. and McCain-Palin Compliance Fund, Inc. (Mar. 24, 2008-Dec. 31, 2008) at 8; AF 2638. GELAC has waived its right to appeal the \$24,510 administrative fine assessed in AF 2638, and is paying the full amount of the fine as part of the penalty set forth in this Agreement.

V. In the interest of resolving this matter, Respondents admit to the following violations:

1. McCain 2008 violated 2 U.S.C. § 441a(f) by accepting \$377,657 in contributions that exceeded the limits of the Act.



2. McCain 2008 violated 2 U.S.C. § 434(b) by failing to report correctly the original dates on which \$22,257,684.17 in contributions were received by its joint fundraising representatives, McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio.

3. GELAC violated 2 U.S.C. § 434(b) by failing to report correctly the original dates on which \$13,258,927.56 in contributions were received by its joint fundraising representatives, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California.

4. McCain 2008 violated 2 U.S.C. § 434(b) by failing to correctly report redesignations made to GELAC.

5. GELAC violated 2 U.S.C. § 434(a) by failing to file 48-hour notices with the Commission for contributions of \$1,000 or more received from the close of books for the 2008 12 Day Pre-General Report up to 48 hours before the November 4, 2008 general election.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eighty Thousand dollars (\$80,000.00) to resolve the complaint-generated matter, the additional violation based on information obtained the Commission, and the administrative fine determination pursuant to 2 U.S.C. §§ 437g(a)(4) and (5)(A). The administrative fine accounts for \$20,000.00 of the total penalty.

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), (b) and 441a(f).

3. McCain 2008 will file with the Commission, in Coordination with RAD, amended disclosure reports that will identify the joint fundraising representative's original date

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of receipt for those contributions that are the subject of the reporting errors addressed in this Conciliation Agreement.

4. McCain 2008 will confirm that it has refunded, redesignated or reattributed any contributions identified in the Section 437g audit as excessive and has amended its relevant disclosure reports, including to disclose via itemizations in memo entries redesignations made to GELAC. McCain 2008 will disgorge to the U.S. Treasury any refunded contributions that the contributor fails to negotiate within thirty (30) days of the effective date of this agreement and will provide evidence of any disgorgement (copies of front and back of negotiated check) to the Commission.

5. GELAC will file with the Commission, in coordination with RAD, amended disclosure reports that will reflect the correct receipt dates for joint fundraising contributions that are the subject of the reporting errors addressed in this Conciliation Agreement.

6. Respondents will file amended McCain 2008 and GELAC disclosure reports as outlined above within 30 days from the date this agreement becomes effective. The Commission agrees that McCain 2008 and GELAC may thereafter terminate, in accordance with the applicable provisions of the Act and Commission regulations.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein, or on its own motion, may review Respondents' compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This Agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

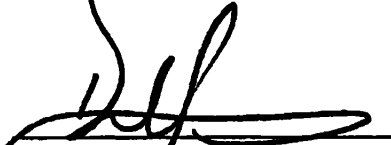
IX. Respondents shall have no more than 30 days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written Agreement shall be enforceable.

FOR THE COMMISSION:

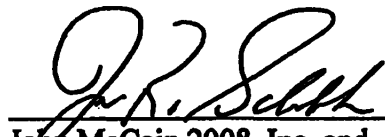
Anthony Herman  
General Counsel

BY:

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

07/16/13  
Date

FOR THE RESPONDENTS:

  
John McCain 2008, Inc. and  
Joseph Schmuckler in his official  
capacity as treasurer

JUNE 30, 2013  
Date

McCain-Palin Compliance Fund, Inc.  
and Joseph Schmuckler in his official  
capacity as treasurer